**IN THE HIGH COURT OF UTTARANCHAL,**
**AT NAINITAL.**

**Second Appeal No. 609/2001**
**(Old No. 2775 of 1987)**

1. Surya Pal Singh @ Suraj Pal
S/o Mukund Lal R/o Vikasnagar,
P.O. Vikasnagar, District Dehradun (deceased).

1/1. Smt. Urmila Devi W/o late Suraj Pal Singh,

½. Hemant Rohalla S/o Late Suraj Pal Singh,

1/3. Sument Rohalla S/o Suraj Pal Singh … Appellants.

Versus

1- Municipal Board Vikasnagar,
District Dehradun through the Executive Officer
Municipal Board, Vikas Nagar,
District Dehradun.

2- Smt. Mamta Rohalla W/o Rakesh Rohalla,
R/o Khaiyam Gali Mill Road Simla

3- Smt. Dimple Rohalla W/o Sandeep Shukar Basti Delhi.

4- Smt. Deepa Rohalla W/o Padam Nath
R/o Bidi Gali Bichla Bazar Bhiwni (Haryana)

5- Smt. Rakhi Rohalla W/o Satya pal Singh
R/o Goldha Gali Girsa (Haryana).

6- Km. Aarti Rohalla D/o late Suraj Pal Singh
Presently residing at Bidi Gali Bichla Bazar Bhiwani
Haryana … Respondents.

Sri Nagesh Agarwal, Advocate for the appellants.
Sri Ram Ji Srivastava, learned counsel for the respondents.

**(Hon'ble B.C. Kandpal, J.)**

This appeal, U/S 100 C.P.C., has been preferred against the judgment and decree dated 18-9-1987, passed by Additional District Judge, Dehradun in C.A. No. 32 of 1983, Surya Pal Singh Vs. Municipal Board, allowing the appeal and setting aside the judgment and decree dated 31-3-1983 passed by the Civil Judge Dehradun in Suit No. 128 of 1982.

2- Brief facts of the case are that plaintiff Surya Pal Singh (since deceased) was the owner of property No. 3/48 old No. 21/40 Ward No.3, Vikas Nagar, Dehradun, detailed in the plaint map. The plaintiff purchased the land from Natha Singh vide sale deed dated 17-1-1952. There was clerical mistake in the sale deed, therefore, supplementary rectification deed was executed by Natha Singh on 9-2-1953 and it was registered. On the death of Chandra Pal Singh, plaintiff became the sole owner of the property. It was pleaded that a latrine existed on the land shown with letters A B C and D red colour in the plaint map. On 25-1-1982 in the absence of the plaintiff, the defendant's Overseer demolished the aforesaid latrine shown by letters E, F, G, H, in the map without any authority. The plaintiff protested against it on 27-1-1982. The defendant asked him to show his title deed on 29-1-1982. It was alleged that the defendant want to construct a road over the land and dispossess the plaintiff, hence suit for permanent and prohibitory injunction was filed against the defendant.

3- The defendant Nagar Palika contested the suit and filed its W.S. The defendant denied the title and ownership of the plaintiff over the property in suit shown with letters A, B, C, D, in the plaint map and alleged that the plaintiff is the owner in possession of the property bearing Municipal No. 3/48 in Ward No.3, Vikasnagar Dehradun. The boundaries shown by the plaintiff of the property were incorrect. It was also alleged that there was no clerical mistake in the description of the plaintiff's property in the sale deed. The supplementary deed is malafide and collusive document executed with the object of usurping the public passage. It was also alleged that the disputed property was never part of the property bearing Municipal No. 3/48 and no latrine ever existed over it. Demolition of the latrine was also denied. The defendant pleaded that in 1940 owners of Sirmaur Estate divided plot No. 2148 into smaller residential plots which were leased out. In the west of these smaller plots on 8 feet wide passage going north to south and connecting the Gurudwara Road and Pahari Gali, was provided and

it was known as Mission Marg. This passage was in public use since 1940 and under U.P. Z.A. and L.R. Act and under U.P. Z.A. & L.R. Act it vested in Gram Sabha and Municipal Board, Vikasnagar. At the time of purchase the plaintiff got land measuring 60 feet north-south by 54 feet, east-west with 9 feet wide passage to the East and South of the property and 8 feet wide passage in the west known as 'Mission Marg'. The defendants have a right to construct a road on it and the suit is barred by Section 326 of Municipalities Act.

4- On the basis of pleadings of parties, the trial court framed following issues in the case:-

1- Whether the plaintiff is owner in possession of the property in suit shown in schedule A and B of the plaint?.
2- Whether the defendant has no right to oust the plaintiff from the property of schedule A to occupy the property of schedule B of the plaint?.
3- Whether the defendant demolished latrine of plaintiff situate in property of schedule B in plaint?.
4- Relief, if any, to which the plaintiff is entitled?.
5- Whether the suit is bad for want of notice U/S 326 of the U.P. Municipalities Act?.

5- The parties adduced evidence before the trial court in support of their cases. The trial court upon consideration of evidence adduced by the parties, decreed the suit of the plaintiff for permanent as well as prohibitory injunction and the defendants were restrained from interfering in the plaintiff's possession and constructing road over the land in dispute shown by letters A B C D in plaint map.

6- Feeling aggrieved, the defendant Municipal Board filed appeal before Additional District Judge, Dehradun, who vide

impugned judgment and decree dated 18-9-1997, allowed the appeal and dismissed the suit with cost.

7- Being aggrieved by the aforesaid judgment and decree dated 18-9-97, the plaintiff/appellant has filed the second appeal before the Allahabad High Court, which has been transferred to this court, after creation of new State.

8- The appeal was admitted on the following substantial questions of law:-

1- Whether the appellate court was justified in holding that the plaintiff has not been able to prove his title and possession over the land in question on the basis of the sale deed dated 17-1-1982 and 9.2.1953?.
2- Whether the court below was justified in holding that the plaintiff's first assertion that his house adjoins the house of Hukum Chand Mam Chand on the west is falsified by his own title deed on the basis that the title deeds does not show the house of Hukum Chand Mam Chand on the west boundary?.

9- Heard learned counsel for the parties and perused the record.

10- The record reveals that the plaintiff-appellant's entire case rests on alleged rectification dated 9-2-1953. By this deed it was asserted that the boundaries and measurements shown in the aforesaid sale deed were wrong and the correct measurements are 77 feet on north-south x 63 feet east-west. It was further asserted that in the western boundary "Mission Marg" be treated as replaced by "Mission land" and the rest of the boundaries remain the same. It was argued that even in rectification deed "Mission land" has been mentioned to the west of the property sold by the original sale deed and rectification deed. It shows that even according to the plaintiff's title deed there was some land of Mission or Mission Marg to the west to the plaintiff's property. The learned counsel for the respondent contended that the plaintiff's evidence itself

Shows that the disputed land ABCD ( in the plaint map) does not belong to the plaintiff and this was actually 'Mission Marg' which vested in Gram Sabha and subsequently in Nagar Palika, Vikasnagar by operation of law. The statement of P.W.1 Surya Pal Singh is based on the knowledge derived from the aforesaid sale deed and rectification deed. The plaintiff has admitted that there is a 12 feet wide passage towards south of his house and it runs north-south. This 12 feet wide passage is situated on the western corner of his house and goes toward south. The disputed land ABCD and 12 feet wide passage are in straight line. He clearly admitted that 12 feet wide passage is public road belonging to the State and it is called as 'Arya Samaj Road'. He denied that it is called as 'Mission Marg' but admitted that it is known as 'Mission Bhumi'. He admits that Mission owned a big plot and they carved out smaller plots and sole them. He deposed that to the west of his house is the house of M/S Hukum Chand Mam Chand, who brought the plot from Mission. He asserted that there is no 8 feet wide passage in between his house and the house of Hukam Chand, It clearly means that his house must be adjoining the house of Hukam Chand, if there is no passage or other property between the two properties. It may be observed that in Ex-5 the northern boundary is mentioned as Aabchak and house of Lala Pyare Lal and Hukam Chand. There does not appear any reason why house of Hukam Chand was not mentioned in the western boundry in either of the two deeds Ext. 5 and Ex.6 and the 'Mission Bhumi' was mentioned in the western boundary. It is no bodies case but there is evidence on record to show that Hukam purchased the adjoining land to the west after the plaintiff purchased the property from Natha Singh. Ex-5 itself mentions that "Bhumi Kar" which is paid every year to the owner of the land still, hence-forth be paid by the transferor. In the circumstances the plaintiff's assertion that his house adjoins the house of Hukam chand on the west is falsified by his own title deed.

11- Further the evidence of P.W.1, Surya Pal Singh indicates that he has admitted that the sewer line has been laid under the

Mission Land but he has asserted that not in his land, i.e. land in dispute. Therefore, from this admission it is clear that the sewer line has been laid to the west of plaintiff-appellant's house. Further the evidence of P.W.2, Purushottam Das indicates that he has no factual knowledge about the Rasta existed to the west of the property which was sold to the plaintiff-appellant's father. This witness clearly admits the defendant-respondent's case that a passage runs from Pahari Gali and joins Guruwara Road and this passage is known as "Mission Marg". Further the certified copy of the registered lease deed of 1963 is available on the record as paper No. 46-C and this lease deed coupled with the title deed of the plaintiff-appellant shows that the Lucknow Diocean Trust Association asserted that there was a 8 feet wide passage to the east of plot No. 61 and Natha Singh admitted that there was "Mission Bhumi" to the west of his house. P.W.2, Purushottam Das has also admitted existence of the passage to the west of the property sold by his father Natha Singh to the plaintiff-appellant Surya Pal Singh and Chandra Pal. The existence of 8 feet wide strip of land not belonging to the plaintiff is further supported by the admitted fact of sewer line having been laid to the west of the plaintiff's house and the same is not in the plaintiff's property or in the property of M/S Hukam Chand Mam Chand. The lower appellate court has clearly recorded a finding that the plaint case does not show existence of any such strip of land and the plaintiff-appellant is never said to have objected to the laying of sewer line by Nagar Palilka, but now he is obstructing the the Nagar Palika in laying the road over it.

12- Learned counsel for the appellant has submitted that once the suit for permanent injunction against dispossession has been filed and the suit is based on the plea of long and exclusive possession, not on title, and the defendant is also raising plea that he has title to suit property, then dismissal of the suit on the ground that the defendant has proved his title and on doctrine that possession follows title would be improper. In support of his submission he has cited before me the cases:-

(1) **Prataprai N. Kothari Vs. John Braganga;** reported in **AIR 1999 Supreme Court 1666;**

(2) **Chutta and others Vs. Pyare and others;** reported in **1965 ( ALJ) 270;**

(3) **M. Kallappa Setty Vs. M.V. Lakshminarayana Rao;** reported in **AIR 1972 Supreme Court 2299;** and

(4) **Chief Conservator of Forests, Govt. of A.P. Vs. Collector and others**; reported in **AIR 1968 Supreme Court 1805.**

13- I have carefully considered these judgments cited by the appellant's counsel before me and I am of the view that these decisions are not applicable to the facts and circumstances of the present case.

14- The main point for consideration in the present case is whether the plaintiff-appellant is the owner of the disputed property and as to whether any latrine was built by him, which demolished by the defendant-respondent. In view of the above discussion it can be safely concluded that the plaintiff-appellant has failed to discharge his burden and to establish his title over the property in suit and the existence of the latrine over disputed land. The shortcomings in the defendant-respondent's evidence cannot take the place of proof of plaintiff's title top the property in suit.

15. There is no cogent and reasonable evidence adduced by the plaintiff-appellant with regard to the demolition of the alleged latrine or its existence on the disputed land. The plaintiff-appellant nowhere has pleaded or adduced any evidence to show that the alleged construction of the latrine was duly authorized by Municipal Board and permission to construct it was obtained. The lower appellate court has rightly recorded the finding that the trial court has erred in believing that the latrine existed on the disputed land. To my mind also the trial court erred in relying on the assertions and denials rather than the probabilities and reliabilities of the evidence while deciding this point. The omission of the

Municipal Board to assert in reply to the plaintiff-appellant's protest note that no latrine ever existed is not a circumstance which may or may not support the plaintiff-appellants' assertion about the existence of the latrine and its demolition.

16- The finding recorded by the lower appellate court that the plaintiff-appellant has failed to prove that he is owner in possession of the disputed land and latrine existed over it, which was demolished by the defendant-respondent, is a finding of fact, which cannot be interfered at the stage of the second appeal.

17- For the reasons stated above I come to the conclusion that this second appeal lacks merit and it liable to be dismissed.

18- Accordingly the second appeal is dismissed. The impugned judgment and order passed by the lower appellate court, is hereby confirmed.

19- The stay order, if any, stands vacated.

**(B.C. Kandpal, J.)**

Dated: December 11, 2006.
ISB